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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 668

WILLIAM LEIGHTON,
Petitioner-Intervenor,

v.

WILLIAM P. ROGERS, Attorney General of the United States, as Successor to the Alien Property Custodian,
Respondent-Defendant,

and

SOCIETE INTERNATIONALE POUR PARTICIPATIONS INDUSTRIELLES ET COMMERCIALES (S. A.),
Respondent-Plaintiff,

and

ERNEST ATTENHOFER, ERIC G. KAUFMAN and ANNEMARIE RUTH KLINGLER,
Respondents-Intervenors.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioner prays that a writ of certiorari issue to review the unreported judgment of October 29, 1958

of the United States Court of Appeals for the District of Columbia Circuit, dismissing an appeal taken from the unreported judgment of April 21, 1958 of the United States District Court for the District of Columbia. Copies of such judgments are contained in the appendix hereto. Petitioner also prays for leave to use the record in No. 348, October Term, 1957, as that record contains the respondents' pleadings in this case.

The jurisdiction of this Court is invoked under Section 1254(1) of Title 28, United States Code, 62 Stat. 928.

Question Presented

Whether petitioner should not be allowed to intervene in this action pursuant to the doctrine and principles of *Allen Calculators* v. *National Cash Register Co.*, 322 U. S. 137, where the purpose of such intervention is to show

(i) that the Federal District Court of first instance lacks jurisdiction over the subject matter of the action; and

(ii) that the plaintiff Interhandel petitioned this Court for certiorari in No. 348, October Term, 1957, on a fraudulent record attributable to its own fraud; and

(iii) that the plaintiff Interhandel has extracted an advisory opinion from this Court, *Societe Internationale* v. *Rogers*, 357 U. S. 198 (1958), for the purpose of aiding, abetting and counselling a proceeding before the International Court of Justice

which is deemed to review and nullify the judgment of this Court of June 16, 1958 and such other and further judgments as the Federal Courts may render in this action.

Statutes, etc. Involved

The pertinent constitutional provisions, treaties and statutes involved are set out in the Appendix, *infra*, pp. 3a-5a.

Statement of the Case

Nine years after the commencement of proceedings in this case and after the petition for certiorari in No. 348, October Term, 1957 was filed in this Court on August 6, 1957, Interhandel's case was publicly espoused by the Swiss Government.

October 1, 1957 at the request of Interhandel (Exhibit 'E' Tr. 269) the Swiss Government filed an Application Instituting Proceedings in the International Court of Justice (Exhibit 'A', Tr. 113). Fearing that the shares of stock in the General Aniline and Film Corporation claimed by Interhandel might be sold by the Alien Property Custodian, respondent here, following a possible denial of certiorari, the Swiss Government, also at Interhandel's instance requested (Exhibit 'B' Tr. 199) that the International Court "indicate interim measures of protection", i. e. enjoin the Custodian from selling the stock pending the outcome of the proceeding in that court.

On October 14, 1957, certiorari was granted, 355 U. S. 812, and the full text of the grant was reproduced in the Order of October 24, 1957 (Exhibit 'C', Tr. 211) of the International Court which denied the need for the injunction. The Hon. Dallas S. Townsend, an attorney of record for the Custodian in No. 348, was designated as United States Co-Agent in the proceeding before the International Court and presented oral argument to that court on October 12 and 14, 1957 (Exhibit 'C', pp. 108-109, Tr. 221-223).

Interhandel's petition for certiorari in No. 348 failed to disclose the material fact that a separate proceeding would be instituted at its request in the International Court of Justice if certiorari was denied and its brief also failed to reveal that such a proceeding had been instituted.

Furthermore, Interhandel's statement of questions presented in its petition for certiorari in No. 348 and brief deliberately failed to disclose the claim made before the International Court (Exhibit 'B', p. 3, Tr. 201) that "the dispute concerning (it) * * * involves interpretation of the Washington Accord and an examination of questions of international law". Interhandel also deliberately failed to present the question whether the Swiss Government had a right to ensure that it (Interhandel) should be treated in conformity with international law, and in particular, should enjoy the full rights secured to it by the agreement concluded between Switzerland and the Allies on May 25, 1946 (Exhibit 'A', p. 22, Tr. 133), even though such question was presented to the International Court on October 3, 1957 (Exhibit 'B', p. 3, Tr. 201), eleven days before certiorari was granted.

Because certiorari in No. 348 was granted for the purpose of considering the proper application of the Federal Rules of Civil Procedure, 355 U. S. at 203 and the policies underlying the Trading with the Enemy Act, *id.* at 204, and since both the Custodian and Interhandel had failed to aver in their petition, brief in opposition and briefs on the merits, respectively, the material facts concerning the litigation before the International Court, petitioner, prior to the argument which was had in this Court on May 1, 1958, moved in the District Court for leave to intervene so that complete relief be granted to the Custodian pursuant to Rule 54(c) of the Federal Rules of Civil Procedure. Petitioner's proposed pleading in intervention also alleged (Tr. 101) the District Court's lack of jurisdiction over the subject matter of Interhandel's action since it appeared that the proceedings before the International Court were predicated upon the theory that Interhandel's claims do not come within the domestic jurisdiction of the United States (Tr. 270, Exhibit 'F').

Without hearing or opinion, the District Court, by order dated April 21, 1958 (Tr. 299, Appendix, *infra*, p. 1a) denied the motion and on July 9, 1958, denied a motion to vacate its order of April 21, 1958 (Tr. 328, Appendix, *infra*, p. 2a). On appeal and upon respondents' Joint Motion to Dismiss, which conceded that petitioner's interest in seeking intervention consisted in seeing to it that complete relief be granted between those already parties (Tr. 342), the Court of Appeals, without hearing or opinion, dismissed an appeal in a *per curiam*, unreported order of October 29, 1958 (Tr. 349, Appendix, *infra*, p. 3a).

If the District Court has jurisdiction of Interhandel's claim, it has jurisdiction to entertain a motion to intervene under F. R. C. P. 24 or to join under F. R. C. P. 19. If the District Court lacks jurisdiction over the subject matter of the action, it becomes its duty, under F. R. C. P. 12(h), to hear petitioner and receive in evidence any proof of such lack of jurisdiction, whereupon the cause should be dismissed.

ARGUMENT

1. The Writ of Certiorari hereby sought should be granted in aid of the Court's certiorari jurisdiction in No. 348, October Term, 1957.

The All Writs Act, 28 U. S. C. Section 1651(a), specifically empowers this Court to issue any writ that is necessary in the exercise of its jurisdiction. Having exercised its certiorari jurisdiction in No. 348, October Term, 1957, on a record which omits material facts upon which turns the jurisdiction of the court of first instance, it is respectfully submitted that a search of the present record for anything that is material to the decision in No. 348 necessarily requires the grant of certiorari in the case at bar.

Beyond peradventure of doubt, a decision on the merits of No. 348 may be rendered by this Court only if there is Federal jurisdiction in the court of first instance; Rule 23(g) of the Rules of this Court. If such jurisdiction is lacking, it becomes unnecessary for this Court to consider and pass on the questions presented, *Puig Jimenez* v. *Glover*, 255 F. 2d 54, 58.

This record alone shows that Interhandel's principal claim is that, the Trading with the Enemy Act notwithstanding, it enjoys an inviolate status under the so-called Washington Accord and the law of nations and that the adjudication of these claims is a matter not within the domestic jurisdiction of the United States. Hence the proceeding it caused to be instituted before the International Court of Justice.

If so, it is clear that the Federal District Court of first instance, which exercises the domestic jurisdiction of the United States upon Interhandel's complaint, lacks jurisdiction to adjudicate Interhandel's subsidiary claims under the Trading with the Enemy Act.

Therefore, this Court's certiorari jurisdiction in No. 348 turns upon an examination of the District Court's jurisdiction of the action. If such jurisdiction is lacking, certiorari was improvidently granted in No. 348, the judgment of June 16, 1958, 357 U. S. 198, should be vacated and the cause ordered dismissed.

2. Under F. R. C. P. 12(h), it is the duty of the District Court to dismiss this action if it is shown to it that it lacks jurisdiction over the subject matter.

F. R. C. P. 12(h) does not limit the manner in which a Federal District Court must inquire into its jurisdiction over the subject matter of an action. Indeed, the suggestion of lack of jurisdiction may be made not only by the parties, but "otherwise" also. Since it is clear that Interhandel will hardly so suggest and that the Custodian has failed to do so, some

other person may do so under the "otherwise" provision of the Rule. To hold otherwise would result in conferring jurisdiction on Federal District Courts by the mere whim of consenting parties, as is the case here.

It is also clear that if the District Court lacks jurisdiction over the subject matter of the action, the original parties before it are "strangers", for such parties have no claims that could possibly be adjudicated by the court. Therefore such parties have no right to prevent an intervenor from asserting their lack of standing to bring suit or defend it. Indeed, *Allen Calculators,* supra, has expressly recognized an intervenor's right to intervene in an action where *the court* thought that "all data was (not) available upon the issues in the case", *id.* at 142.

The District Court erred in not hearing petitioner and in not considering the pertinency to the action of the exhibits produced by petitioner. Certainly the denial of the motion to intervene did not help this Court in deciding No. 348, for the issues raised by, or on behalf of, Interhandel in the International Court relate to the same claim, that concerning the shares of stock in the General Aniline.

This erroneed the District Court into the further error of retaining jurisdiction of the case at the same time that the International Court acquired jurisdiction over it. This is plainly contrary to the District Court's own holding in *Switzer* v. *Marzall,* 95 F. Supp. 721, 722, where the basic rule was said to be that "two courts cannot have jurisdiction of the same case at the same time * * *".

3. The District Court abused its discretion in exercising its jurisdiction over the subsidiary claim arising under the Trading with the Enemy Act if it has jurisdiction over the principal claim under the Washington Accord and the law of nations.

28 U. S. C. Section 1350 confers upon the District Court jurisdiction to entertain any claim that Interhandel might have under the Washington Accord or the law of nations, "general" or otherwise. The Washington Accord consists solely of "diplomatic correspondence" alleged to have been exchanged between the Swiss and the Allied Governments, the United States Government being among the latter. It is similar to the international agreement which was in issue in *United States* v. *Guy W. Capps Inc.*, 348 U. S. 296 (1954). The difference between the executive agreement in *Guy W. Capps* and the Washington Accord is that whereas the former was duly incorporated in the United States Statutes at Large pursuant to law, then 44 U. S. C. Section 196 (1946 Edition), now 1 U. S. C. Section 112a, the latter was not.

However, Interhandel's principal claim is that under the Washington Accord, it has acquired an inviolate status that is cognizable under "general" international law. If so, there is no occasion for the District Court to assume jurisdiction of the subsidiary claim under the Trading with the Enemy Act before disposing of the principal claim. Certainly, there is no necessity for this Court to "decide important questions as to the proper application of the Federal Rules of Civil

Procedure", 357 U. S. at 203 in connection with such subsidiary claim before disposition of the principal claim.

Therefore, before exercising any jurisdiction in the case, the District Court should be directed to investigate all the facts underlying Interhandel's claim, especially the *fact* that the controversy before it is being litigated in the International Court. For it is that *fact* that sheds complete light upon the true nature of Interhandel's action. And the District Court should not be permitted "to 'brush aside a matter of such importance with little more than a casual wave of the hand", cf. *Boston & Maine R. R. v. United States*, 162 F. Supp. 289, at 298, 358 U. S. 68.

Indeed as this Court held in *Boston & Maine*, jurisdiction should be exercised only after a thorough investigation into all the *relevant facts* surrounding a claim. Only then should jurisdiction be founded upon a particular statute and when so exercised, jurisdiction should be limited to the statute that must be necessarily invoked. To do otherwise, would amount to rendering an opinion on a question that does not arise, a practice so strongly discouraged by a long line of decisions by this Court, the most recent of which is *Barr v. Matteo*, 355 U. S. 171.

The District Court's denial of petitioner's motion to intervene is "little more than a casual wave of the hand", for there is no finding or conclusion that petitioner's exhibits do not reveal *relevant facts*.

4. The Constitution of the United States does not contemplate that the judicial power of the United States should be exercised by this Court over a case or controversy that is being simultaneously litigated in the International Court of Justice.

Article III, Section 1 of the Constitution of the United States vests the judicial power of the United States in this Court or the lower Federal courts. It follows therefrom that a "case or controversy" that is before this Court may not be litigated at the same time in some other tribunal.

Nevertheless, through the device of omitting from its pleading, petition for certiorari and brief in No. 348 *material facts* that are necessary in order to make the statements therein not false or misleading, Interhandel has succeeded in litigating in this Court "important questions as to the proper application of the Federal Rules of Civil Procedure" in connection with its subsidiary claim under the Trading with the Enemy Act while simultaneously litigating its principal claim under the Washington Accord and the "general" law of nations in the International Court of Justice.

Neither Rule 19 of the Rules of this Court, which sets forth the considerations governing review on certiorari nor any decision by this Court have yet held that certiorari jurisdiction will be exercised while litigation concerning the same controversy is taking place simultaneously in the International Court of Justice at the instance of the party petitioner here. So to hold would amount to yielding to the International Court some, if not all, of the judicial power of the United States which the Constitution exclu-

sively confers upon this Court, and the lower Federal courts.

Thus, the *fact* that Interhandel's claims were being litigated at the same time in the International Court while this Court was in the process of exercising its certiorari jurisdiction raises serious questions whether this Court could properly exercise such jurisdiction over No. 348.

It is respectfully submitted that this record alone suggests the Court's possible lack of jurisdiction of No. 348, for which reason certiorari should be granted now.

5. The Judicial Power of the United States, as vested in this Court and the lower Federal courts, is not subject to collateral attack before the International Court of Justice.

The Presidential Declaration of Acceptance of the compulsory jurisdiction of the International Court of Justice, 61 Stat. 1218, expressly excludes from such jurisdiction "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America".

Therefore, since the Judicial Power of the United States is constitutionally vested in this Court, or the lower Federal courts, it is for this Court to declare whether the matters brought on by Interhandel in No. 348 as well as the matters it caused to be brought before the International Court are "essentially within the domestic jurisdiction of the United States of America". If this Court so holds, there is no further

occasion for the International Court to assume jurisdiction to hear and determine Interhandel's principal claim. Such a declaration would be in aid of the Court's certiorari jurisdiction in No. 348 for the judgment that issued from that proceeding is now being collaterally attacked by Interhandel before the International Court. Such a collateral attack is not contemplated by the Constitution, for as this Court said in *Cooper* v. *Aaron*, 358 U. S. 1, 18, "the Federal judiciary is supreme in the exposition of the law of the Constitution * * *" and its interpretation, as enunciated by this Court, is the supreme law of the land.

In view of the "clear and present danger" to the certiorari jurisdiction of this Court in No. 348 consisting of the imminence of a judgment by the International Court purporting to pass upon the judgment of this Court in No. 348, certiorari should be granted now in order to enable this Court to decide, on this record, whether the judgment in No. 348 should not be vacated.

6. This Court did not render its judgment in No. 348 with the knowledge that it would be certified to the International Court of Justice in connection with the proceeding there pending.

Following the issuance of its Order of October 24, 1957 (Exhibit "C", Tr. 211), the International Court granted the Custodian until June 16, 1958 to file his and the State Department's Preliminary Objections to that court's jurisdiction.

On that date, just prior to the issuance of this Court's judgment, 357 U. S. 198, the Custodian,

jointly with the State Department, filed such Preliminary Objections which were signed by three of his attorneys of record in No. 348 here, the Hon. Dallas E. Townsend, Sidney B. Jacoby, Esq. and Paul E. McGraw, Esq. Because such Objections did not and could not encompass this Court's judgment in No. 348, an additional memorandum was filed with the International Court on July 3, 1958 to which was attached a certified copy of this Court's judgment in No. 348.

Nothing in the record in No. 348, the parties' pleadings and other papers filed therein suggests that this Court was advised that its judgment would serve the purpose of the then pending proceeding in the International Court. Certainly it is not for your petitioner to speculate just what the decision of this Court in No. 348 would have been had it been advised at the oral argument on May 1, 1958 that such would be the case. It is enough that your petitioner respectfully brings to the Court's attention the *fact* that its judgment was used for a purpose for which it was not intended, a fact which raises serious questions as to the Court's exercise of its certiorari jurisdiction in No. 348.

7. This record alone shows that the collusion between Interhandel and the Swiss Government relates back to May 4, 1948.

Prior to October 21, 1948, the date of the filing of Interhandel's complaint in No. 348, there was no dispute between the Swiss Government and the Custodian regarding Interhandel's claims. This is the Swiss Government's own admission made at the oral

proceedings had before the International Court of Justice on November 17, 1958.

Therefore, if no collusion had existed at or since that time between the Swiss Government and Interhandel, there would have been no occasion for the Swiss Government to espouse Interhandel's claim on May 4, 1948, as this record shows (Exhibit 'A', Annex 4, p. 29, Tr. 140). On that date, the Swiss Government took the highly unusual step of submitting to the Secretary of State the statutory forms prescribed by the Custodian for claims relating to vested property, duly filled out by Interhandel, even though, admittedly, there was no "dispute" regarding the claim at that time.

This fact permits the speculation that the relations between the Swiss Government and Interhandel were then and remain now on a basis other than those between sovereign and subject. For on May 4, 1948, the Swiss Government asserted its "rights" with respect to Interhandel's claims and on October 3, 1957 (Exhibit 'B', p. 3, Tr. 201) it sued in the International Court for the "interim protection" of those rights.

The very *fact* that Interhandel has deliberately failed to set forth in its complaint in No. 348 the principal claim under the Washington Accord and the "general" law of nations even though nothing prevented it from doing so at the time of filing it, October 21, 1948, suggests that this is the result of the collusion between it and the Swiss Government. For the Swiss Government has deliberately failed to join this litigation for the purpose of asserting its "rights" but this has not prevented it from accusing this Court of a "negative attitude" towards such "rights" as it now asserts in the International Court.

In sum, ever since May 4, 1948, the Swiss Government and Interhandel have conspired to prevent the principal claim from ever being passed upon by the Federal courts. As a result of this manipulation of the judicial proceedings, considerable profits were realized by large-scale speculators in Interhandel stock who saw the "special situation" thus created. These speculators have actually gained control of Interhandel *following* this Court's judgment of June 16, 1958 through the device of depositing their holdings with the large Swiss banks who now act as their nominees on Interhandel's Board of Directors.

8. The law of this Court is that it will look behind names that symbolize parties to determine whether a justiciable case is presented.

In *United States* v. *Interstate Commerce Commission*, 337 U. S. 426, 430, this Court has so held and reminded the litigants that it will not render judgment on a case that is not justiciable. In the case at bar, there loom the "rights" of the Swiss Government in connection with any adjudication of Interhandel's claims and indeed, ever since May 4, 1948, the Swiss Government has taken an active and biased interest in this litigation through diplomatic channels.

But in *Rice, Adams Corporation* v. *Lathrop*, 278 U. S. 509, 515, this Court held that "a court of equity ought to do justice complete and not by halves and having properly acquired jurisdiction of the cause for that purpose, it will ordinarily retain jurisdiction for all purposes, including *determination of legal*

rights which otherwise would fall within the exclusive authority of a court of law".

Surely it is not below the dignity of the Swiss Government to appear before this Court and seek here first the adjudication of the "rights" that it asserts before the International Court. Indeed, *Russian Government* v. *Lehigh Valley R. R. Co.*, 21 F. 2d 396, *certiorari denied*, 275 U. S. 571, explicitly recognized the right of a foreign government, duly represented here, to have access to the Federal courts "as a normal incident of ambassadorial functions". This right is also recognized in Switzerland where foreign governments wishing to establish their rights under treaties to which they and Switzerland are parties are required to present their claims to the Swiss courts. The British Government has actually done so in a case decided by the Swiss Federal Court on October 31, 1957 where it was held that the British Government's failure to ratify an international agreement and exchange ratification instruments deprived it of any "rights" that it may have under the provisions of such agreement.

However, supervening events that occurred from November 5 to 17, 1958 show why the Swiss Government has failed to join this litigation for the adjudication of its "rights" concerning Interhandel's claims. These events are expressly cognizable under the law of this case, *Kaufman* v. *Brownell*, 251 F. 2d 374, 375, following *Watts, Watts & Co.* v. *Unione Austriaca*, 248 U. S. 9, 21.

Between those dates, extensive oral argument was heard by the International Court of Justice on Exhibit 'A' hereto. Espousing and arguing Interhandel's

case, the Swiss Co-Agent, Professor Paul Guggenheim stated to that court (p. 90 of the official transcript):

"If one examines the nature of the action commenced by Interhandel in the American courts, one realizes that it does not concern questions of international law. The action is founded solely on the allegation that Interhandel's assets in the United States are not enemy assets within the meaning of the *laws* of the United States. But the definition of enemy assets within the meaning of those laws need not necessarily coincide with, and actually does not coincide, with the definition of enemy assets within the framework of the Washington Accord and the *general* international law. The international proceeding need not take into account the results which might be reached by American jurisdictions since these have not examined in the past and will not examine in the future the rules of international law that control here. * * * *The negative attitude shown by American courts with regard to an examination of the questions of international law appears very clearly from the last decision of the Supreme Court of the United States, that of June 16, 1958*, whereby Interhandel's suit against the Attorney General has been remanded to the Federal District Court for the District of Columbia. *In that decision, the Supreme Court* issued certain instructions and directives to the lower courts that will handle the case, but it *does not mention in any way the numerous problems of international law which, in accordance with the views of the Swiss Government*, are the subject of this litigation. Quite the contrary, the Supreme Court, in its ruling on the merits, made two observations which show clearly that the American national proceeding is based on principles that

are different from those that underlie the international proceeding * * *."

And on November 17, 1958, the same Professor Guggenheim told the court: "We insist upon the fact that American courts have not been able to, are not able now and will not be able in the future to carry out this task for the reason that they cannot review the Interhandel case in the light of the Washington Accord and the *general* international law".

Thus, in conspiracy with Interhandel, the Swiss Government imputes to this Court a "negative attitude" towards questions that have never been presented here in No. 348 pursuant to Rule 23(1).

If the Swiss Government has a "right" that Interhandel should be treated in accordance with the "general" law of nations and the Washington Accord, it should be required to so state at the bar of this Court for it is clear that any adjudication of Interhandel's claims involves the adjudication of the Swiss Government's "rights". Obviously the Swiss Government is an indispensable party within the meaning of Rule 12(b)(7) of the Federal Rules of Civil Procedure and no judgment should issue if the joinder is not perfected.

9. Interhandel came into this Court with unclean hands; it should be denied any and all relief.

Interhandel's fraudulent pleading consists of its deliberate omission, resulting from its collusion with the Swiss Government, of its principal claim as it is said to arise under the "general" law of nations and

the Washington Accord. Its purpose in coming into this Court in No. 348 was not to abide by the decision of this Court as every litigant here is expected to do, but to furnish the Swiss Government with material that purports to show this Court's "negative attitude" towards questions that it has not presented here.

At the time of Interhandel's appearance, through its counsel of record here and in No. 348, before the Subcommittee on the Trading with the Enemy Act of the United States Senate on April 5, 1957, its appeal had been argued but not yet decided by the Court of Appeals below. This did not prevent Interhandel from filing Exhibit 'F' hereto with the Subcommittee, whereby it claimed that the whole matter is not within the domestic jurisdiction of the United States, even though such jurisdiction is a prerequisite of appellate jurisdiction under the Court of Appeals' Rule 17(c)(4).

Although other corporations seeking the return of their vested properties through Congressional enactment, such as the Hugo Stinnes Enterprises, have registered as foreign principals under the Foreign Agents Registration Act of 1938, as amended, Interhandel has never done so even though it is engaged, by its own admission, Exhibit 'E' hereto, in a large-scale effort at the legislative level through its counsel of record here and in No. 348.

All in all, Interhandel's conduct falls within the standard of proscribed conduct set by this Court in the television cases decided at this Term, *Sangamon Valley T. V. Corporation* v. *United States et al.*, 358 U. S. 49, *WIRL* v. *United States*, 358 U. S. 51 and

WORZ v. *F. C. C.*, 358 U. S. 55. From the Court's action in those cases it is clear that where testimony in the record on certiorari here or on appeal below differs from the record developed before a Congressional Committee, the decision based upon such a record would be vacated and the cause remanded for the purpose of bringing the two records in harmony with each other.

Obviously Interhandel's urging of the Subcommittee on the Trading with the Enemy Act, by means of Exhibit 'F' hereto, that its claims do not come within the domestic jurisdiction of the United States hardly corresponds to the clear showing of jurisdiction in the Federal District Court of first instance that is required by this Court's Rule 23(1)(g) and the Court of Appeals' Rule 17(c)(4).

For these reasons Interhandel should be denied any relief since the Federal courts do not sit at the instance of a corporate plaintiff who is engaged in the creation of a "special situation" in its stock for the benefit of the insiders controlling it.

10. Interhandel should be held liable and responsible for all the written and oral utterances made by the Swiss Government in the proceedings before the International Court of Justice.

It is well settled that any statements made by a party to an action are admissible in evidence, *Anderson* v. *National Producing Co.*, 253 F. 2d 834, hence Exhibit 'E' hereto is admissible as evidence of Interhandel's aiding, abetting and counselling the Swiss Government's action in the International Court.

These proceedings have afforded Interhandel a forum whence to lash out at the Federal judiciary in a manner bordering on contempt but with the added convenience that the Swiss Government's diplomatic immunity precludes any contempt action on the record in No. 348. For example, the Swiss Agent, Professor Sauser-Hall, addressing the International Court on November 12, 1958 (p. 120 of the oral proceedings), termed as "reprehensible" and "highly irregular" the Custodian's issuance of duplicate share certificates for such of the General Aniline stock as is still in Interhandel's possession in Switzerland. But such action is clearly supported by *Cities Service* v. *McGrath*, 342 U. S. 330 (1952); and surely, there is nothing "reprehensible" about the supreme law of the land as laid down by this Court in that case. Indeed, Interhandel has not filed an amended pleading in No. 348 seeking a reversal of *Cities Service* as applied to its own case.

This is but one instance of Interhandel's and the Swiss Government's war on this Court and the Federal judiciary and the record should be enlarged to permit this Court to evaluate just what Interhandel has said, or caused to be said, in the International Court of Justice and addressed at this Court or the lower Federal courts.

11. Petitioner's position comes squarely within the doctrine of *Allen Calculators*, supra.

In *Allen Calculators*, supra, this Court has given a flexible meaning to Rule 24 F. R. C. P. in order to permit all pertinent facts to appear on the record upon which any decision is rendered by the Federal

courts. While it is unnecessary to speculate as to the *reason* why the Custodian has failed to inject into this litigation *as material facts* the very issues being litigated by him in the International Court of Justice, it is sufficient to aver here that the Administration's policy runs contrary to Section 39 of the Trading with the Enemy Act and that this policy was judicially noticed by the Court of Appeals in *De Wagenknecht* v. *Stinnes*, 250 F. 2d 414, 417, Note 5.

Whatever the Custodian's position may have been heretofore, your petitioner surely has a right to intervene in order to introduce into the record *material facts* to the litigation in No. 348.

But such intervention does not require that your petitioner waive such basic Constitutional rights as the right to copyright. Copyright subsists in all the writings of an author, Section 4 of the Copyright Act, 17 U. S. C., and in asserting copyright in all the papers filed herein, your petitioner has but followed the holding of this Court in *Federal Crop Insurance Corporation* v. *Merrill*, 332 U. S. 380, 385, where it was held that "men must turn square corners when dealing with the Government". Hence it is but appropriate that your petitioner should assert his right to copyright in this proceeding where the Government is a party.

The particular combination of ideas expressed in this petition and the papers filed by your petitioner below is copyrightable. Substantial agreement on this point exists between the Circuits, *Gordon* v. *Weir*, 216 F. 2d 508, *Cash Dividend Check Corporation* v. *Davis*,

247 F. 2d 458, 460, and the Court of Appeals below has not stated its disagreement with this view.

The Custodian, who has opposed petitioner's copyright as an "illusion" has not enlightened your petitioner why a copyright should be considered as "property" when vested by him pursuant to Section 2(d) of Executive Order No. 9193, as amended, 7 F. R. 5205, 10 F. R. 6917, but should not be so considered within the meaning of Rules 24(a)(3) and 75(o), F. R. C. P. as applied to this action.

In sum, petitioner's right to copyright is subordinated to a finding and conclusion that the copyrighted pleadings and other papers are not material to the disposition of the case. The record is barren of any such finding or conclusion. For this reason, the judgment below should be reversed and the cause remanded with directions that petitioner should be granted a hearing as a preliminary to a finding of fact and conclusion of law regarding the materiality of petitioner's exhibits and the copyrightability of petitioner's expressions of ideas.

Conclusion

The writ of certiorari should be granted primarily in aid of the Court's certiorari jurisdiction in No. 348, October Term, 1957 and secondarily for the adjudication of petitioner's standing to intervene.

If oral argument is ordered, the record should be ordered printed at public expense in view of the vastness of the questions involved and because the consideration of the questions presented would not primarily benefit petitioner.

In the alternative, the cause should be summarily remanded to the District Court with directions that it make appropriate findings of fact and reach conclusions of law regarding the issues injected by petitioner's proposed pleading in intervention.

Respectfully submitted,

WILLIAM LEIGHTON
Petitioner pro se

APPENDIX

Pertinent Orders of the Lower Courts in This Case

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

ORDER DENYING MOTION OF WILLIAM LEIGHTON FOR PERMISSIVE JOINDER AND/OR INTERVENTION

This matter having come on for consideration before the Court on the "Motion for Permissive Joinder and/or Intervention" and accompanying papers served upon the plaintiff, upon intervenors Attenhofer et al. and upon the defendants by William Leighton, on the opposition to said motion filed by the said parties and on the supplementary points and authorities served by said William Leighton on counsel for the plaintiff, counsel for the Attenhofer intervenors et al. counsel for the Klingler intervenors et al. and counsel for the defendants, it is this 21st day of April, 1958

ORDERED that the motion of William Leighton for permissive joinder and/or intervention be, and it is hereby denied.

/s/ DAVID A. PINE
Judge

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4360-48

ORDER

Upon consideration of the "Motion to vacate the Order of April 21, 1958, to extend the time for filing the record on appeal and the docketing thereof and for other relief", filed July 1, 1958 by William Leighton and Points and Authorities in support thereof, and opposition thereto, it is this 9th day of July, 1958

ORDERED that the aforesaid motion be and the same is hereby denied.

/s/ DAVID A. PINE
Judge

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA

No. 14,624 September Term, 1958

District Court Civil Action No. 4360–48

Before: Wilbur K. Miller, Fahy and Danaher Circuit Judges, in Chambers.

ORDER

Upon consideration of the joint motion of appellees to dismiss this appeal, and of appellant's opposition, it is

ORDERED by the court that this appeal be, and it is hereby, dismissed.

Per Curiam.

Dated: October 29, 1958.

CONSTITUTIONAL PROVISIONS, TREATIES AND STATUTES INVOLVED

Constitution of the United States

Article III, Section 1. The judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish. * * *

Section 2. The Judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitu-

tion, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

Rules, Supreme Court of the United States, 347 U. S. No. 2:

Rule 23(1): "The petition for writ of certiorari shall contain in the order here indicated * * *

(c) the questions presented for review, expressed in terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. *Only the questions set forth in the petition or fairly comprised therein will be considered by the court.* * * *

(e) A concise statement of the case containing the *facts material* to the consideration of the questions presented. * * *

(g) If review of the judgment of a federal court is sought, the statement of the case *shall also show the basis of federal jurisdiction in the court of first instance* (emphasis supplied).

Federal Rules of Civil Procedure.

Rule 24. Intervention.

(a) *Intervention of Right.* Upon timely application anyone shall be permitted to intervene in an action: * * * (3) when the applicant is so situated as to be adversely affected by a distribution or *other disposition of property which is in the custody or subject to the control or disposition of the court or an officer thereof.*

(b) *Permissive intervention.* Upon timely application anyone may be permitted to intervene in an action: * * * (2) when an applicant's claim or defense and the main action have a question of law or fact in common.

Judicial Code, Title 28, United States Code.

Section 1350. The district courts have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.